

May 26, 2014

Ms. Jane Diamond, Director  
Water Division  
And  
David Albright, Manger  
Ground Water/Underground Injection Control

David W Wawrzyniec

FOIA Exemption 6

FOIA Exemption 6

e-mail: FOIA Exemption 6

U.S. EPA Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

**VIA e-mail and DHL Courier**

Re: Florence Copper/Curis Resources  
UIC Permit Application pending before the US EPA Region 9 Water Division

Dear Ms. Diamond and Mr. Albright:

I am writing to you to express my concerns, as well as the concerns of many other investors, regarding the permitting process on the Florence Copper project. I cannot understand the excessive delays in issuing a decision regarding the draft UIC permit, given the scale of the phase 1 project, representations made by your offices, and the fact that, previously, the project had been fully permitted for commercial production.

Prior to becoming a shareholder in the company, I reviewed the EPA information and Region 9 specific policies regarding the permitting process. I then filed a request under the Freedom of Information Act for additional information. As of early 2013, I was informed of the following with regard to the permitting process:

- The normal permitting timeframe for a new UIC permit was 1 year, but in the case of a controversial permit, it could take up to two years.
- In an agreement with the EPA, the applicant modified their permit request to cover only phase 1 of the project, in part to expedite the permitting process, and in part to collect necessary data to satisfy requirements for additional information relevant to the permit for commercial production.
- The technical review of the permit was complete and the only remaining issue was the satisfaction of the requirements under the Historic Preservation Act (the Rule 106 process).
- The Rule 106 process would include consultation with interested parties and Tribal groups, a review of the proposed treatment plan, and the drafting of a memorandum of agreement/understanding.

**Note:** Based on the scope of work described for the Rule 106 process, it was my understanding that the process was likely to take approximately 3 to 4 months to complete, which, in light of the site being well known and documented, seemed to be a very generous timeline for completing the process described.

- Following the completion of the technical review (which at the time of my inquiry was substantially complete) and the Rule 106 process, the EPA would enter a deliberative phase expected to take approximately 10 days, which would be followed by the issuing of a decision on the draft permit.

Further research into the project history and work undertaken demonstrated the following:

- BHP had previously done extensive work on the project and secured all permits for full scale commercial operations.
- The current permit under consideration is for a test facility which covers a relatively small footprint.
- BHP conducted extensive cooperative work with Tribal Groups regarding preservation of historical artifacts and remains on the site.
- Curis Resources has continued to ensure that Tribal groups have had an opportunity to express their views, and has spoken publically about its commitment to support further preservation efforts with the Tribal groups and has actively sought their input.
- Florence Copper has been diligent in engaging Tribal groups and has been fully committed to ensuring that the historical and sacred artifacts will be treated appropriately and with the utmost respect.
- The archaeological record at issue is well documented and understood, and has been for many years.

I am also aware of the various controversies and parties standing in opposition to the project; all substantially being driven or funded by South West Value Partners (SWVP)/GTIS MR, a competing business interest.

**Given the history of the project and the information provided to me by the EPA, my concerns are as follows:**

- The EPA does appear to have followed the timelines or processes that were described to me in my initial contacts with the Region 9 offices.
- The Rule 106 Process is a cause of great concern on multiple points.
  - There seems to be a lack of commitment by the EPA to conclude the Rule 106 process, in spite of the fact that the company has been diligent in its assurances regarding the preservation of historic artifacts.
  - The consultation period for Tribes has extended far beyond any reasonable timeframe, and it now appears the time spent in consultation has eclipsed the more substantive and intensive technical review.

**Note:** Even if new archaeological concerns had been discovered, standard archaeological treatments are well documented, and it is simply not possible, given the known science, that addressing those concerns would warrant such an excessive consultation period that is now more than double the expectations created from my initial consultations with your offices.
  - Each time I have consulted the EPA regarding the status of the Rule 106 progress, the goal posts have moved with no clear guidance or transparency in the decision making process.
  - From discussions with various parties, it seems that there has been very little coordination in engaging Tribal groups that have legitimate historical rights to this area, and again, little progress seems to have occurred.
- The continuing delays in issuing a decision seem to indicate a careless disregard by the EPA for the damages that these delays cause, and a disregard for the due process that that should be accorded to Florence Copper. These delays seem incomprehensible to me given the representations of your office regarding the normal timeframes for processing a full UIC permit (1 to 2 years), and the fact that Florence Copper negotiated an amendment to the permit process to cover only phase 1 to expedite the phase 1 permit (which would imply a shortened period of review to less than 2 years and possibly less than 1 year), and the scope of work required to complete the Rule 106 process.

- As to the opposition and controversy surrounding the project and permit, South West Value Partners /GTIS MR is nothing more than a competing business interest attempting to delay the project and inflict financial damages on the company, and I have serious concerns regarding possible attempts by this group to deprive Curis Resources of their right to due process under EPA authority:
  - In the recent ADEQ appeals hearing, aside from engaging in baseless fear mongering, opponents of the project have attempted to:
    - Impune the integrity and ethics of virtually every ADEQ employee involved in the review of the State permit.
    - Attack the integrity of public officials up to and including the Office of the Governor of Arizona.
  - In the same hearing, SWVP made an admission in open court that gives me substantial cause for alarm. On the public record, SWVP admitted that they provided a number of letters/briefs to the EPA, as well as ADEQ, during what they termed "the unofficial comment period".

To my knowledge no such "unofficial comment period" exists under statute or rule at the Federal or State level, and the consideration of such briefs by a party, that is nothing more than a competing business interest, is wholly inappropriate for consideration by the EPA. Any such communication should have been rejected by the EPA with a request that such comments be submitted during the statutory public comment period. Any entertainment of such unofficial comments unreasonably diverts resources of the EPA from their proper work under statute, and unfairly deprives all other parties, including myself as an investor, of fair and equitable treatment under law.

**Note:** I had heard from other investors that SWVP was using its formidable resources to attempt to exercise undue influence over the permitting processes at both the State and Federal level. The fact that they would brazenly admit their attempts to interfere in a regulatory process in open court is nothing short of stunning.

- I am seriously concerned as to whether or not the EPA has the means or desire to ensure that SWVP not be permitted to engage in brazenly abusive practices. SWVP has already demonstrated their lack of integrity by causing a map, showing the location of relics and archaeological sites sacred to Tribal groups, to be published in a public record, and carelessly exposing these archaeological resources to potential looting. A map that the tribes and the Archeology, Historic Preservation Branch clearly define as "not for public view", and have gone to great lengths to keep it so.

Furthermore, SWVP has extended their basis for opposition so far beyond any realm of logic that they tried to argue that, in the case of the ADEQ Temporary APP permit, the employees of ADEQ did not conduct a sufficient review because they had failed to consider the argument summarized as, *"If ADEQ were aware that information might or might not exist regarding the incomplete BHP pilot test, shouldn't ADEQ consider whether that information (that might or might not exist) be relevant to the current permit application, and might that information have had on an effect on the terms of the permit."*

**It is my understanding that the EPA and other regulatory agencies exist for specific purposes and are intended to provide specific regulatory frameworks to ensure protection of the environment:**

- The EPA serves, in part, to ensure that businesses conduct their operations without adversely impacting environmental quality.
- Although the statutes under which the EPA functions do not include a specific regulatory bill of rights; the principle of due process is surely ingrained the very foundation of our government. The Region 9 EPA office clearly recognizes that not all parties who might have an interest in the permit process will have the financial resources to fully participate in the permitting process, and by its policies ensures that groups will not be disenfranchised due to lack of financial resources.

**Note:** I would submit that not every investor in a publicly traded company has the financial means such as those possessed by SWVP, et al, to have their voice heard regarding the permitting process. Why should a group such as SWVP, a competing business interest, have such undue influence or favored opportunity to engage in rhetoric based on questionable facts with no reasoning based in logic?

- A number of state agencies have defined timelines for responses and requests for additional information in regulatory affairs, namely those in Nevada and California. Other federal agencies, such as the FDA, publish clear expectations and guidance with regard to their activities, and even publicly acknowledge when those expectations shift. I do not understand why the EPA Agency should not act in a similar structured manner.
- My concern as a private citizen, a shareholder of publicly-traded companies, and a responsible tax - generating citizen is that the EPA has ceased being an agency conducting itself in a fair and independent manner in collaborating with permittees to ensure safe and successful utilization of our natural resources. Instead it appears to be following the specific agenda of select business or interest groups applying unreasonable tactics to attempt to destroy or strangle a legitimate permitting process to the detriment of all concerned.

**Note:** I find it particularly egregious that so many of us in the United States of America are content to enjoy the luxuries of modern life at the expense of the health and wellbeing of the poorest classes in the poorest countries of the world. The EPA should act responsibly with regard to permitting and foster the safe and efficient utilization of our resources, and through such an approach would perhaps have a more positive influence world-wide in terms of the abusive practices where no such regulatory agencies exercise any power.

I have attempted to provide you with a rational and well thought out discussion of my concerns regarding the subject UIC permit and the EPA practices in general. In conclusion, I would like to ask you to give consideration to the following points:

- More than sufficient time has been allowed and resources expended to reasonably conclude the Rule 106 process.
- Opponents of the project have, to date, failed in all accounts to provide clearly qualified and unbiased experts or technical data supporting their position that this test facility poses a substantial and uncontrollable risk to water quality. If their attempts to influence the EPA's due process have directly or indirectly resulted in delays, such delays are an injustice.
- Opponents, under the guise of environmental concern, are only seeking to serve their own business interests.

**Note:** In the ADEQ appeal hearing, there appeared to be evidence suggesting that one of the Appellants may have gone so far as to blade over an existing well without verifying whether the well had been properly abandoned. This is not something that an environmentally concerned party would do.

- Private citizens, and any investor in a publicly traded company, should be able to rely on the EPA for transparent and reasonable regulatory processes so that it is possible to fairly assess the value and credibility of development timelines for projects such as the Florence Copper project.
- As permittees must incur substantial fees and costs associated with permit applications, it is incumbent upon the EPA to ensure that applicants are not deprived of their right to due process as a result of ex parte interference from competing business interests.

As I am well aware that the work load of government agencies and the resources they are allocated are woefully out of balance, I do not expect a detailed response to each and every concern I have enumerated; however, I would appreciate an acknowledgment as to your consideration of my concerns. If my observations are incorrect, I welcome any correction or clarification.

My most immediate questions and concerns, for which I would appreciate a more considered response, are as follows:

1. What are the objectives that must be met to conclude the phase 1 permit process and what is the projected timeline for issuing a decision on the draft permit?
2. Will the EPA act expeditiously to conduct the public hearing and comment process in manner that ensures public participation without infringing on the right of the permittee to an expeditious due process?
3. Will the EPA fairly balance the rights of the permit applicant and ensure that competing interests are only allowed to participate in the process through the statutory comment period, or through other statutory processes for both the phase 1 and phase 2 permits?
4. What process and timeline will the EPA require for the phase 2 permit and will the prior permitting work and results of the phase 1 test provide for a more timely and efficient permitting process than has occurred on the phase 1 permit?

**Note:** This is especially concerning to me given that, in large part, the original negotiated agreement to separate the two permits was to achieve the goal of a more expeditious review of the test facility permit; a goal which has not in any way been realized. Furthermore, in the record of the ADEQ appeals hearing, the Appellants gleefully interjected that that they would be back in two years for another round of hearings, which would imply that the Appellants are not acting based on any genuine concern but merely as a delaying tactic for self-serving business interests. Their statement implied that no matter how much data was provided or how many protections were put in place that they would still not find the project acceptable.

I voice these questions and concerns on my behalf and on behalf of my colleagues and fellow investors. How are we to know if the past unreasonable and extraordinary delays in issuing a decision on the permit terms will continue through the public comment review period, and would these delays then continue through the commercial aspects of the permit operating conditions and terms?

In recognizing that the provisions of the Freedom of Information Act embody a substantial administrative burden on an already overextended agency, I have chosen the route of direct correspondence and I hope that you will take it upon yourselves to respond appropriately and to assure myself and all investors in this project that you will carry out your regulatory business with due regard to the applicant, Florence Copper, in a manner fully independent of any attempts by competing business interests to use undue influence either through direct or indirect channels, to deprive Florence Copper of their due process.

Furthermore, I recognize that an informal discussion by telephone would be sufficient acknowledgement of the majority of my concerns, and would be much more efficient than a written reply. To that end, I would welcome the opportunity to talk with you if you deem it appropriate. I am working overseas in Qatar at the moment, and I can be available by phone (+974 3367 9839) or skype (davidwawrzyniec).

Sincerely,

A handwritten signature in blue ink, reading "David W. Wawrzyniec", with a long horizontal flourish extending to the right.

David W. Wawrzyniec

/dww